

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DON MARCUM POOL CARE, INC.,	:	APPEAL NO. C-100793
		TRIAL NO. A-0911640
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
SIDER-OXYDRO, INC.,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Defendant-appellant Sider-Oxydro, Inc., appeals from the judgment entered by the Hamilton County Court of Common Pleas in favor of plaintiff-appellee Don Marcum Pool Care, Inc.

Don Marcum filed a lawsuit against Sider-Oxydro after two pool repair products that Don Marcum had purchased from Sider-Oxydro failed. Don Marcum alleged contract, warranty, and product-liability claims. After a bench trial, the trial court entered judgment in favor of Don Marcum on its claim for the “breach of the warranty [of fitness] for a particular purpose.” Sider-Oxydro failed to request findings of fact and conclusions of law as provided by Civ.R. 52.

In two assignments of error, Sider-Oxydro essentially argues that the trial court erred by finding in favor of Don Marcum on its claim for “breach of the implied warranty of merchantability.” The implied warranty of merchantability encompasses the concept

that the goods “are fit for the ordinary purposes for which such goods are used.” R.C. 1302.27(B)(3); U.C.C. 2-314. The implied warranty of fitness for a **particular** purpose is a separate warranty. See R.C. 1302.28; U.C.C. 2-315; *Bolt v. Yamaha Motor Corp., U.S.A.*, 7th Dist. No. 8-03-17, 2004-Ohio-1205, ¶ 11. In its judgment entry, the trial court stated that it found in favor of Don Marcum on its claim for the breach of this latter warranty.

The assignments of error address the implied warranty of merchantability and are not responsive to the judgment in favor of the plaintiff on the implied warranty of fitness for a particular purpose. Thus, the errors alleged are not demonstrated by the record. Accordingly, we overrule the assignments of error.

Therefore, we affirm the trial court’s judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., CUNNINGHAM and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on April 25, 2012

per order of the court _____.
Presiding Judge